
TITLE 312 NATURAL RESOURCES COMMISSION

Emergency Rule
LSA Document #13-532(E)**DIGEST**

Temporarily adds noncode provisions for the Great Lakes Basin of Indiana to amend [312 IAC 6.2](#) and to assist with implementation of Article 4 of [IC 14-25-15-1](#) pertaining to water management and regulation under the Great Lakes-St. Lawrence River Basin Water Resources Compact for registration and permitting of water withdrawal facilities; a voluntary conservation and efficiency program for water withdrawal facilities; and mandatory conservation and efficiency programs for new and increased withdrawals, diversions, and consumptive uses. Effective December 1, 2013.

SECTION 1. (a) Under [IC 14-25-15](#) within the basin of Indiana, this document implements and regulates the following:

- (1) A water withdrawal, diversion, or consumptive use that is subject to registration or permitting.**
- (2) A voluntary program for promoting water conservation and efficiency for a person with a water withdrawal facility.**
- (3) A mandatory program for promoting water conservation and efficiency for a person with a water withdrawal facility that is subject to regulation under [IC 14-25-15](#) or rules adopted under [IC 14-25-15](#).**

(b) This document assists with the goal of the state of Indiana to promote and encourage environmentally sound and economically feasible water conservation measures by water users within the basin consistent with the Great Lakes-St. Lawrence basin water conservation and efficiency objectives set forth in Resolution 5.

(c) This document supplements [312 IAC 6.2](#).

SECTION 2. (a) Definitions in Section 1.2 of [IC 14-25-15-1](#), [312 IAC 1](#), and [312 IAC 6.2](#) apply throughout this document.

(b) In addition to the definitions referenced in subsection (a), the following definitions apply:

- (1) "Baseline volume" refers to the amount of water approved through a status determination under [IC 14-25-15-12](#) (or approved through a modification to a status determination or another previous department order) with respect to any of the following categories:**
 - (A) A total water withdrawal capability registered under [IC 14-25-7-15\(c\)\(3\)](#).**
 - (B) A consumptive use attributable to a facility.**
 - (C) A facility that diverts water outside the basin.**
- (2) "Basin" or "Great Lakes-St. Lawrence River Basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec, within the jurisdiction of the parties to the compact.**
- (3) "Basin of Indiana" means the portion of the basin located in the state of Indiana.**
- (4) "Best management practices" or "BMPs" means methods or techniques found to be the most effective and practical means in achieving an objective (such as preventing or minimizing water losses) while making the optimum use of available resources.**
- (5) "Compact" means the Great Lakes-St. Lawrence River Basin Compact described in [IC 14-25-15-1](#).**
- (6) "Deputy director" refers to the deputy director for the bureau of water and resource regulation established by [IC 14-9-3](#).**
- (7) "Facility" means a water withdrawal facility.**
- (8) "Q90" means the amount of flow in a stream that was equaled or exceeded by the annual daily mean stream flow ninety percent (90%) of the time.**
- (9) "Resolution 5" refers to "Resolution #5-Adoption of Basin-Wide Conservation and Efficiency Objectives", which was adopted by the council on December 8, 2008.**
- (10) "Salmonid stream" refers to each of the following:**
 - (A) Trail Creek and its tributaries downstream to Lake Michigan.**
 - (B) Galena River and its tributaries in LaPorte County.**
 - (C) East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch.**
 - (D) St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line.**

(11) "Water use audit" means a systematic framework for accurately measuring water use and water loss in a given system.

(12) "Water withdrawal facility" refers to a system or process that:

(A) in the aggregate from all sources and by all methods, has the capability of withdrawing more than one hundred thousand (100,000) gallons of ground water, surface water, or ground and surface water combined, in one (1) day; or

(B) diverts.

SECTION 3. A facility that does not exceed its baseline volume for any category listed in SECTION 2(b)(1) of this document is exempt from the permitting requirements but must satisfy the monitoring and reporting requirements of this document.

SECTION 4. (a) This SECTION applies to the sale or other transfer of a facility with a baseline volume.

(b) Not later than March 31 of the year following a sale or other transfer to another person of a right to use all or a portion of a facility's baseline volume, the facility must notify the division on a department form. The notification must include the name and contact information for the buyer or other transferee and any other information reasonably required on the form to achieve compliance with this document.

(c) If a facility does not comply with subsection (b), the sale or transfer is ineffective under [IC 14-25-15](#), [312 IAC 6.2](#), and this document.

(d) For a sale or transfer that is effective, the buyer or transferee is beneficiary to the amount of the baseline volume that is sold or transferred. The amount of the approved baseline volume of the seller or transferor is reduced by the amount sold or transferred.

(e) A buyer or transferee must comply with any action required by Section 4.12(4) of [IC 14-25-15-1](#).

SECTION 5. (a) This SECTION governs registration of a withdrawal, consumptive use, or diversion.

(b) A person must register a facility with the division on a department form under this SECTION.

(c) A new facility that would withdraw less than a threshold amount described in SECTION 6(b)(1) or 6(b)(3) of this document must notify the department within ninety (90) days of completion of the withdrawal system.

(d) An existing facility that would have an increased withdrawal exceeding the baseline volume, for a water withdrawal capability under [IC 14-25-7-15\(c\)\(3\)](#), which, when combined with all prior increases, does not result either in:

(1) an increase above the threshold amount described in SECTION 6(b) of this document; or

(2) increased total consumptive use for the facility that is greater than five million (5,000,000) gallons daily;

must notify the department by March 31 of the year following the increase.

(e) An existing facility with an increased withdrawal that would not satisfy subsection (c) must obtain authorization in advance under [IC 14-25-15](#), [312 IAC 6.2](#), and this document.

(f) To qualify for registration, an applicant must provide the following information on a department form:

(1) The applicant's:

(A) name and mailing address;

(B) contact person's name; and

(C) contact person's telephone number and e-mail address.

(2) If an applicant authorizes another person to be responsible for implementation of a withdrawal and the return of water to the basin, and the associated reporting requirements, the authorized person must provide the following information:

(A) Name and mailing address.

(B) Contact person's name.

(C) Contact person's telephone number and e-mail address.

(3) The location and sources of any withdrawal or diversion.

(4) The capacity of any withdrawal in gallons per day.

(5) The amount withdrawn or diverted from each source in gallons per day for any thirty (30) day period.

(g) By March 31 of the following year, a person registered under this SECTION must report each of the following to the division on a department form:

- (1) Updates to registration information.
- (2) Information regarding evaluation, implementation, and results of water conservation and efficiency efforts used at the facility during the year.
- (3) Monthly volumes of water in gallons for each of the following:
 - (A) Withdrawals.
 - (B) Consumptive uses.
 - (C) Diversions.

(h) Registration under [IC 14-25-15](#) and this document also satisfies the registration requirements of [IC 14-25-7-15](#).

SECTION 6. (a) This SECTION governs an individual permit for a withdrawal, consumptive use, or diversion.

(b) A person must obtain a permit under [IC 14-25-15](#) and this document before implementing a new water withdrawal, for any period of ninety (90) consecutive days, which exceeds on a daily basis at least the following:

- (1) From Lake Michigan, five million (5,000,000) gallons.
- (2) From a salmonid stream, one hundred thousand (100,000) gallons.
- (3) From any other source of ground water or surface water or of ground water and surface water combined, one million (1,000,000) gallons.

(c) Unless exempted under [IC 14-25-15-8](#), a person must obtain advance approval to increase, for any period of ninety (90) consecutive days, the average thresholds under subsection (b) of an existing withdrawal of ground or surface water or ground water and surface water combined for either:

- (1) a withdrawal; or
- (2) an increase in consumptive use to greater than five million (5,000,000) gallons per day.

(d) Except as provided in subsection (g), an applicant must provide each of the following:

- (1) The information required for registration in SECTION 5(f) of this document.
- (2) Identification of which of the following the applicant seeks:
 - (A) A new or increased withdrawal in excess of a threshold described in subsection (b).
 - (B) A new or increased consumptive use in excess of five million (5,000,000) gallons per day.
 - (C) An exception to the prohibition on diversions for any of the following:
 - (i) A straddling community.
 - (ii) A community within a straddling community.
 - (iii) An intra-basin transfer.
- (3) The location of any source of water for a withdrawal or diversion to include the following:
 - (A) The applicant's sole or preferred source.
 - (B) Any source that is an alternative to clause (A).
 - (C) Any well or pump site.
 - (D) If a person other than the applicant would make a withdrawal, information to reasonably support a finding the person:
 - (i) has sufficient capacity to serve the applicant's needs; and
 - (ii) is willing to negotiate a purchase price with the applicant.
- (4) A map or photograph to assist with identification of the following:
 - (A) The source watershed that includes if:
 - (i) ground water, that the source is a confined or an unconfined aquifer; or
 - (ii) surface water, that the source is a river, stream, or lake (and the name of the water body).
 - (B) The proposed location of any withdrawal and return flow discharge.
 - (C) If a diversion, both of the following:
 - (i) The existing water supply service area.
 - (ii) The area that is proposed to receive the diverted water.
- (5) The new or increased diversion and any associated consumptive use, which includes the following:
 - (A) The total proposed maximum volume of the withdrawal, diversion, or consumptive use over the

planned life of the project (but not exceeding fifty (50) years) in millions of gallons per day:

- (i) averaged over a calendar year;
- (ii) over the peak period of ninety (90) consecutive days during a calendar year; and
- (iii) monthly.

(B) Whether the use would be:

- (i) continuous;
- (ii) seasonal; or
- (iii) temporary.

(C) Locations where the withdrawal and where the return discharge would be measured.

(D) The technical method to be used for determining the rates of flow.

(6) If within the prior ten (10) years, an application was approved to increase the baseline volume for the facility, the date of the approval and the daily volume in gallons for any the following:

- (A) Withdrawal.
- (B) Consumptive use.
- (C) Diversion.

(e) For an exception to the prohibition on diversions that is subject to Section 4.9 of [IC 14-25-15-1](#), an applicant must additionally satisfy the criteria in:

- (1) Section 4.9.1 of [IC 14-25-15-1](#) for a straddling community;
- (2) Section 4.9.2 of [IC 14-25-15-1](#) for an intra-basin transfer;
- (3) Section 4.9.3 of [IC 14-25-15-1](#) for a straddling county;

as described in Section 4.9.4 of [IC 14-25-15-1](#).

(f) For a new or increased withdrawal or consumptive use that is subject to Section 4.10 of [IC 14-25-15-1](#), an applicant must additionally satisfy the criteria in the decision making standard of Section 4.11 of [IC 14-25-15-1](#).

(g) The owner of a facility is not required to register under [IC 14-25-7-15](#), or to obtain a water withdrawal permit under this document, if the facility is installed and used exclusively for any of the following purposes:

- (1) Testing or evaluating the ground water resource for a period not greater than seventy-two (72) hours in one (1) calendar year.
- (2) A noncommercial project that continues for not more than three (3) months for firefighting, humanitarian, or emergency response purposes.
- (3) Supplying a vehicle, boat, or aircraft with respect to:
 - (A) transport of a person or animal;
 - (B) ballast; or
 - (C) operating a vehicle, boat, or aircraft.

SECTION 7. (a) This SECTION establishes a general permit for a withdrawal or for a consumptive use.

(b) A person who qualifies under this SECTION is not required to obtain an individual permit under [IC 14-25-15](#) and SECTION 6 of this document.

(c) To qualify for a general permit, a person must satisfy each of the following:

- (1) Comply with all requirements for registration of a withdrawal or consumptive use under SECTION 5 of this document.
- (2) Limit any new or increased average consumptive use to less than five million (5,000,000) gallons over any period of ninety (90) consecutive days.
- (3) Unless prior written approval is obtained from the department, refrain from making a withdrawal from, or from a well within one-half (1/2) mile of, a salmonid stream.
- (4) Following an order issued by the department under [IC 4-21.5-4](#), cease or curtail the withdrawal as directed, if the department determines either:
 - (A) a ground water withdrawal exceeds the recharge capability of the source aquifer; or
 - (B) the withdrawal is causing a stream flow that is both:
 - (i) below Q90; and
 - (ii) likely to result in an adverse impact to fish, wildlife, or botanical resources.

SECTION 8. (a) This SECTION identifies and develops voluntary conservation and efficiency objectives in the basin of Indiana as anticipated by Resolution 5.

(b) Consistent with Section 4.2 of [IC 14-25-15-1](#), all facilities registered under [IC 14-25-7-15](#) are encouraged to consider and implement measures such as the following:

(1) The development and submission to the division for comment of a water conservation and management plan as follows:

(A) Components may include:

- (i) A description and quantification of current water use and reuse as identified by a water audit.
- (ii) Water conservation goals.
- (iii) Current and proposed metering activity.
- (iv) Methods to control unaccounted water.
- (v) Methods for water reuse.
- (vi) Methods for leak detection and repair.
- (vii) Other conservation or efficiency measures employed or considered.

(B) An implementation timeline for each component listed in clause (A).

(C) A monitoring plan that includes measures for adaptive management.

(2) The implementation of best management practices developed by the department for the following use categories:

(A) Industrial and energy production.

(B) Irrigation.

(C) Public water supply.

(D) Rural and other.

(3) The use of other recognized conservation and efficiency programs and information developed by the following:

(A) United States Environmental Protection Agency.

(B) American Ground Water Trust.

(C) Alliance for Water Efficiency.

(D) Indiana's Water Shortage Plan.

(E) Another governmental agency or nongovernmental organization.

(4) Reporting participation in a water conservation and efficiency program. The report may include any of the following:

(A) Elements of the program.

(B) The resulting savings in water use. These savings may be quantified in any of the following terms:

(i) Gallons or liters.

(ii) Financial savings from reductions to any of the following:

(AA) chemical treatments for public water supply;

(BB) expenditures on infrastructure;

(CC) pesticides or herbicides; or

(DD) additives to irrigation water.

(C) Any other information supporting improved understanding of conservation and efficiency programs.

(5) Participation in department surveys and questionnaires that seek accurate and timely data regarding conservation and efficiency programs.

(c) The department shall make an annual assessment of the extent to which conservation and efficiency programs meet goals and objectives. The department shall provide the assessment:

(1) Annually to the council and the regional body.

(2) On the department's website and as otherwise practicable to the public.

SECTION 9. (a) This SECTION governs water conservation and planning as required, under [IC 14-25-15](#) or rules adopted under [IC 14-25-15](#), for a new or increased withdrawal, diversion, or consumptive use.

(b) As part of a permit application to the department, a person with a facility subject to decision making under the compact must include a water conservation plan that satisfies SECTION 8(b)(1) of this document.

(c) In addition to the requirements of subsection (b), an applicant for a new or increased diversion for public water supply must do each of the following:

(1) Document conservation and efficiency use of existing water supplies by providing analyses of community water use for the previous five (5) year period, including how water use has:

(A) Changed over time.

(B) Changed or is anticipated to change with the implementation of a conservation and efficiency

program.

- (2) Include a water-use reduction goal and methods proposed to measure attainment of the goal.
- (3) Document the implementation of best management practices applicable to the facility.

(d) The department shall not approve an application for a new or increased diversion or withdrawal unless the applicant demonstrates adequately the ability to perform each of the following:

- (1) Measurement of water use.
- (2) Adoption of BMPs.
- (3) Implementation of environmentally sound and economically feasible conservation and efficiency measures.

SECTION 10. (a) This SECTION applies to the review of conservation and efficiency objectives in the basin of Indiana.

(b) A modification to conservancy and efficiency objectives may result as a response to council review that is anticipated to occur every five (5) years.

(c) The department shall consider modifying conservation and efficiency objectives in its ongoing program implementation. A determination to modify objectives shall be based on the following:

- (1) New technologies.
- (2) New patterns in water use.
- (3) New resource demands and threats.
- (4) An assessment of cumulative impacts under Section 4.15 of [IC 14-25-15-1](#).

SECTION 11. This SECTION applies to the commitment by the state of Indiana to promote environmentally sound and economically feasible measures such as the following:

- (1) Measures to promote the efficient use of water as follows:
 - (A) Education and outreach on water efficiency directed to facilities registered under [IC 14-25-7-15](#).
 - (B) Regular dissemination of conservation information such as informational pieces, brochures, newsletters, updates, and similar communications.
- (2) Identification and dissemination of best management practices and state of the art conservation and efficiency technology as follows:
 - (A) Surveys to identify current water use planning and conservation components implemented or planned by registered facilities.
 - (B) Education and outreach tailored to registered facilities in all use categories.
 - (C) Public listing of potential best management practices.
 - (D) Other methods reasonably designed to implement this subdivision.
- (3) Assistance to facilities with the development and application of sound planning principles as follows:
 - (A) Documents and forms for voluntary management planning.
 - (B) Assistance with water auditing and plan development.
 - (C) Support for conservation planning, analyses, or modification.
 - (D) Other planning assistance.
- (4) Identification of demand-side or supply-side measures or incentives as follows:
 - (A) Promoting conservation pricing for public utilities.
 - (B) Promoting public education on conservation activities at all levels of water use.
 - (C) Developing a recognition program for "super conserver" awards to be posted publicly.
 - (D) Other measures and incentives reasonably designed to implement this subdivision.

SECTION 12. (a) This SECTION describes how the department shall measure the success of the voluntary water conservation and efficiency measures.

(b) The department shall determine, record, and report:

- (1) The number of facilities for which voluntary conservation and efficiency planning is reported.
- (2) The number of facilities for which documentation of conservation and efficiency programming is provided.
- (3) Attendance at conservation and efficiency workshops.
- (4) Other metrics designed to assist in determining conservation and efficiency participation.

(c) A permit that is subject to SECTION 9 of this document shall contain standards for compliance and remedies for failures to comply with plans for water conservation and efficiency. The department

shall develop metrics which do the following:

- (1) Summarize compliance standards for new or increased withdrawals and diversions and for consumption uses.
- (2) Document the frequency of noncompliance with the standards as summarized in subdivision (1).
- (3) Describe the remedies required for noncompliance with the standards.
- (4) Document the success or failure of remediation.

SECTION 13. (a) A person violates [IC 14-25-15](#) and this document if the person either:

- (1) acts without authorization if authorization is required under [IC 14-25-15](#) or this document; or
- (2) violates a term or condition of a registration, an individual permit, a general permit, an exemption, or another authorization described in [IC 14-25-15](#) or this document.

(b) Except as provided in [312 IAC 6.2-1-3](#)(c) and subject to [IC 14-10-2-3](#), the deputy director may issue any order appropriate to licensure under or enforcement of [IC 14-25-15](#) and this document.

SECTION 14. SECTIONS 1 through 13 of this document take effect on December 1, 2013.

SECTION 15. This document expires on the earlier of December 1, 2014, or the effective date of LSA Document #13-335.

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